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## In this chapter. . .

This chapter discusses the procedural requirements to initiate a designated case proceeding. It describes the procedural requirements for arraignments, designation hearings, and preliminary examinations. The rules governing preliminary examinations in adult criminal cases apply to designated case proceedings; however, a complete discussion of those rules is beyond the

\*The flowchart is reproduced with permission of R. Scott Ryder, Referee, 9th Circuit Court.

scope of this benchbook. See *Criminal Procedure Monograph 5—Preliminary Examinations (Revised Edition)* (MJI, 2003).

The appendix contains a flowchart describing the procedural steps in designated case proceedings.\*

Pretrial issues that may arise in designated case proceedings are discussed in other portions of this benchbook. See the following:

- Comparison of waiver and designated case proceedings, Section 1.6;
- Pretrial detention, Section 3.9;
- Amending a petition to designate a case, Section 5.5;
- Infancy defense, Section 9.1;
- Pretrial motions, including motions to suppress evidence, Chapter 7; and
- Prosecutorial charging discretion in “automatic waiver” proceedings, Section 20.3.

**Note on court rules.** On February 4, 2003, the Michigan Supreme Court approved extensive amendments to Subchapter 5.900 of the Michigan Court Rules, which govern delinquency, minor PPO, designated case, and “traditional waiver” proceedings, and to Subchapter 6.900, which govern “automatic waiver” proceedings. Subchapter 5.900 was renumbered Subchapter 3.900. These rule amendments are effective May 1, 2003. Although not in effect on the publication date of this benchbook, the rule amendments have been included here. For the rules in effect prior to May 1, 2003, see the first edition of this benchbook, *Juvenile Justice Benchbook: Delinquency & Criminal Proceedings* (MJI, 1998).

## 17.1 Definition of Designated Case Proceeding

A designated case proceeding is a proceeding in which the prosecutor has designated, or has asked the Family Division to designate, the case for trial in the Family Division in the same manner as an adult. MCR 3.903(A)(6).

The proceedings in a designated case are criminal and must afford all of the procedural protections and guarantees to which the juvenile would be entitled if he or she were being tried for the offense in a court of general criminal jurisdiction. A plea of guilty or nolo contendere, or a verdict of guilty, results in the entry of a judgment of conviction. The conviction has the same effect and liabilities as if it had been obtained in a court of general criminal jurisdiction. MCL 712A.2d(7) and MCR 3.903(D)(9).

Only the prosecuting attorney may designate a case or request leave to amend a petition to designate a case in which the petition alleges a specified juvenile violation, and only the prosecuting attorney may request the court to designate a case in which the petition alleges an offense other than a specified juvenile violation. MCR 3.914(D)(1)–(2). Thus, although the prosecuting attorney initiates both types of designated cases, if a specified juvenile violation is not alleged, the court must hold a hearing to determine whether or not to designate the case. That hearing is described in Sections 17.10–17.12, below.

## A. Prosecutor-Designated Cases

MCL 712A.2d(1) states as follows:

“(1) In a petition or amended petition alleging that a juvenile is within the court’s jurisdiction under [MCL 712A.2(a)(1)] for a specified juvenile violation, the prosecuting attorney may designate the case as a case in which the juvenile is to be tried in the same manner as an adult. An amended petition making a designation under this subsection shall be filed only by leave of the court.”\*

\*Before or during a preliminary hearing, the prosecuting attorney may amend a petition by right to designate a case. See Section 5.5.

MCR 3.903(D)(6) defines “prosecutor-designated case” as a case in which the prosecuting attorney has endorsed a petition charging a juvenile with a “specified juvenile violation” with the designation that the juvenile is to be tried in the Family Division in the same manner as an adult.

MCR 3.903(D)(8) provides that MCL 712A.2d contains the list of specified juvenile violations. MCL 712A.2d(9)(a)–(g), in turn, include the following offenses:

- burning a dwelling house, MCL 750.72;
- assault with intent to murder, MCL 750.83;
- assault with intent to maim, MCL 750.86;
- assault with intent to rob while armed, MCL 750.89;
- attempted murder, MCL 750.91;
- first-degree murder, MCL 750.316;
- second-degree murder, MCL 750.317;
- kidnapping, MCL 750.349;
- first-degree criminal sexual conduct, MCL 750.520b;
- armed robbery, MCL 750.529;
- carjacking, MCL 750.529a;

\*Effective March 1, 2003, 2002 PA 665 amended MCL 333.7401 (2)(a)(i) and MCL 333.7403 (2)(a)(i) to require manufacture, sale, delivery, or possession of *1000 grams* or more of a Schedule 1 or 2 narcotic or cocaine.

- bank, safe, or vault robbery, MCL 750.531;
- assault with intent to do great bodily harm, MCL 750.84, if armed with a dangerous weapon;
- first-degree home invasion, MCL 750.110a(2);
- escape or attempted escape from a medium- or high-security juvenile facility operated by the Family Independence Agency or a county juvenile agency, or a high-security facility operated by a private agency under contract with the Family Independence Agency or a county juvenile agency, MCL 750.186a;
- manufacture, sale, or delivery, MCL 333.7401(2)(a)(i), or possession, MCL 333.7403(2)(a)(i), of 650 grams or more of a Schedule 1 or 2 narcotic or cocaine;\*
- any attempt, MCL 750.92, to commit any of the above crimes;
- any solicitation, MCL 750.157b, to commit any of the above crimes;
- any conspiracy, MCL 750.157a, to commit any of the above crimes.

MCL 712A.2d(9)(b)(i)–(iv) provide that “dangerous weapon,” as used in the context of a specified juvenile violation, means one of the following:

- a loaded or unloaded firearm, whether operable or inoperable;
- a knife, stabbing instrument, brass knuckles, blackjack, club, or other object specifically designed or customarily carried or possessed for use as a weapon;
- an object that is likely to cause death or bodily injury when used as a weapon and that is used as a weapon, or carried or possessed for use as a weapon; or
- an object or device that is used or fashioned in a manner to lead a person to believe the object or device is a weapon.

MCL 712A.2d(9)(h) and (i) provide that the definition of specified juvenile violation includes:

- any lesser-included offense arising out of the same transaction as a specified juvenile violation if the juvenile is also charged with a specified juvenile violation, and
- any other offense arising out of the same transaction if the juvenile is also charged with a specified juvenile violation.

**Lesser-included offenses.** Two types of lesser-included offenses exist: (1) necessarily included offenses, and (2) cognate (or allied) lesser offenses. A necessarily included offense is one in which all the elements of the offense are contained within the greater offense, and it is impossible to commit the greater offense without also having committed the lesser. *People v Bearss*, 463 Mich 623, 627 (2001). See also *People v Veling*, 443 Mich 23, 36 (1993) (the evidence at trial will always support the lesser offense if it supported the greater). A cognate or allied lesser offense is one that “share[s] some common elements, and [is] of the same class or category as the greater offense, but ha[s] some additional elements not found in the greater offense.” *People v Perry*, 460 Mich 55, 61 (1999), quoting *People v Hendricks*, 446 Mich 435, 443 (1994).

In *People v Cornell*, 466 Mich 335, 353–54 (2002), the Michigan Supreme Court ruled that MCL 768.32(1), a seldom-used statute governing lesser-included offenses, must be applied to offenses that are expressly divided into degrees and to offenses in which different grades or offenses or degrees of enormity are recognized. The Court in *Cornell* also held that MCL 768.32(1) “does not permit cognate lesser offenses.” *Cornell*, *supra* at 354. See also *People v Pasha*, 466 Mich 378, 384 n 9 (2002) (“Following our decision in *Cornell*, the trier of fact may no longer convict a defendant of a cognate lesser offense.”).

## B. Court-Designated Cases

MCL 712A.2d(2) states in part:

“In a petition alleging that a juvenile is within the court’s jurisdiction under [MCL 712A.2(a)(1)] for an offense other than a specified juvenile violation, the prosecuting attorney may request that the court designate the case as a case in which the juvenile is to be tried in the same manner as an adult. The court may designate the case following a hearing if it determines that the best interests of the juvenile and the public would be served by the juvenile being tried in the same manner as an adult.”

MCR 3.903(D)(2) defines “court-designated case” as a case in which the court, pursuant to a request by the prosecutor, has decided according to the factors set forth in MCR 3.952(C)(3) that the juvenile is to be tried in the Family Division in the same manner as an adult for an offense other than a specified juvenile violation. As required by MCL 712A.2d(2), the court must hold a hearing to determine whether to designate the case. MCR 3.903(D)(4) defines a “designation hearing” as a hearing on the prosecutor’s request that the court designate the case for trial in the Family Division in the same manner as an adult.\*

\*See Section 17.10, below, for rules governing designation hearings).

## 17.2 Venue in Designated Case Proceedings

Designated cases are to be filed in the Family Division of the county in which the offense occurred. Other than a change of venue for purpose of trial, a designated case may not be transferred to any other county, except, after conviction, a designated case may be transferred to the juvenile's county of residence for entry of a juvenile disposition only. Sentencing of a juvenile, including delayed imposition of sentence, must be done in the county in which the offense occurred. MCR 3.926(G). See also MCL 712A.2(d), which provides that a designated case "shall not be transferred on grounds of residency."

## 17.3 Right to Counsel

\*See Section 5.7 for discussion of a juvenile's right to counsel.

At the arraignment in a designated case, the court must advise the juvenile of the right to an attorney pursuant to MCR 3.915(A)(1). MCR 3.951(A)(2)(b)(i) and 3.951(B)(2)(b)(i).\*

## 17.4 Arraignments

An arraignment, in the context of a designated case, means the first hearing at which "the juvenile is informed of the allegations, the juvenile's rights, and the potential consequences of the proceeding[,] the matter is set for a probable cause or designation hearing[,] and if the juvenile is in custody or custody is requested pending trial, a decision is made regarding custody pursuant to MCR 3.935(C)." MCR 3.903(D)(1)(a)–(c).

## 17.5 Referees Who May Conduct Arraignments

A referee may conduct a hearing other than a preliminary examination, trial, or sentencing in a designated case. MCR 3.913(A)(1). A referee who conducts an arraignment in a designated case need not be a licensed attorney. See MCR 3.913(A)(2)(c) (referees who conduct hearings to amend the petition to designate case and designation hearings must be licensed attorneys).

## 17.6 Time Requirements for Arraignments

**When juvenile is in custody or custody is requested.** MCR 3.951(A) (prosecutor-designated cases) and 3.951(B) (court-designated cases) outline the procedures for initiating designated cases. The procedures differ slightly depending upon whether the case is a prosecutor-designated case or a court-designated case, and whether the juvenile is in custody or custody is requested, or the juvenile is not in custody and custody is not requested.

In both prosecutor-designated and court-designated cases, if the juvenile is in custody or custody is requested, the arraignment must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays as defined by MCR 8.110(D)(2), or the juvenile must be released. MCR 3.951(A)(1)(a) and 3.951(B)(1)(a).

**Note:** See also MCR 3.935(A)(1), which requires a preliminary hearing to commence within 24 hours after the juvenile is taken into custody. The prosecutor may amend the petition by right to designate the case or to ask the court to designate the case during the preliminary hearing. See Section 5.5.

**When juvenile is not in custody and custody is not requested.** Where the juvenile is not in custody and custody is not requested, the juvenile must be brought before the court for an arraignment as soon as the juvenile's attendance can be secured. MCR 3.951(A)(1)(b) and 3.951(B)(1)(b).

**Adjournments.** MCR 3.951(A)(1)(a) and 3.951(B)(1)(a) state:

“The court may adjourn the arraignment for up to 7 days to secure the attendance of the juvenile's parent, guardian, or legal custodian or of a witness, or for other good cause shown.”

## 17.7 Required Procedures at Arraignments

MCR 3.951(A)(2) and 3.951(B)(2) provide that at the beginning of an arraignment, the court shall do the following:

“(a) The court shall determine whether the juvenile's parent, guardian, or legal custodian has been notified and is present. The arraignment may be conducted without a parent, guardian, or legal custodian, provided a guardian ad litem or attorney appears with the juvenile.

“(b) The court shall read the allegations in the petition . . .”

### A. Advice of Rights in Prosecutor-Designated Cases

MCR 3.951(A)(2)(b) states that in a prosecutor-designated case, the court must advise the juvenile on the record in plain language:

“(i) of the right to an attorney pursuant to MCR 3.915(A)(1);\*

“(ii) of the right to trial by judge or jury on the allegations in the petition;

\*See Section 5.7.

“(iii) of the right to remain silent and that any statement made by the juvenile may be used against the juvenile;

“(iv) of the right to have a preliminary examination within 14 days;

“(v) that the case has been designated for trial in the same manner as an adult and, if the prosecuting attorney proves that there is probable cause to believe an offense was committed and there is probable cause to believe that the juvenile committed the offense, the juvenile will be afforded all the rights of an adult charged with the same crime and that upon conviction the juvenile may be sentenced as an adult;

“(vi) of the maximum possible prison sentence and any mandatory minimum sentence required by law.”

## **B. Advice of Rights in Court-Designated Cases**

MCR 3.951(B)(2)(b) states that in a court-designated case, the court must advise the juvenile on the record in plain language:

“(i) of the right to an attorney pursuant to MCR 3.915(A)(1);\*

“(ii) of the right to trial by judge or jury on the allegations in the petition;

“(iii) of the right to remain silent and that any statement made by the juvenile may be used against the juvenile;

“(iv) of the right to have a designation hearing within 14 days;

“(v) of the right to have a preliminary examination within 14 days after the case is designated if the juvenile is charged with a felony or offense for which an adult could be imprisoned for more than one year;

“(vi) that if the case is designated by the court for trial in the same manner as an adult and, if a preliminary examination is required by law, the prosecuting attorney proves that there is probable cause to believe that an offense was committed and there is probable cause to believe that the juvenile committed the offense, the juvenile will be afforded all the rights of an adult charged with the same crime and that upon conviction the juvenile may be sentenced as an adult;

\*See Section 5.7.



“(vii) of the maximum possible prison sentence and any mandatory minimum sentence required by law.”

## 17.8 Authorization of Petition by Court at Arraignment

Unless the arraignment is adjourned, the court must decide whether to authorize the petition to be filed. MCR 3.951(A)(2)(c) and 3.951(B)(2)(c) provide that if it authorizes the filing of the petition, the court must:

- determine if fingerprints must be taken pursuant to MCR 3.936,\* and
- determine whether to detain or release the juvenile pursuant to MCR 3.935(C)–(E).\*

\*See Section 25.11.

\*See Sections 5.12–5.13.\*

If the arraignment is adjourned, the juvenile may be detained pending the completion of the arraignment if it appears to the court that one of the circumstances in MCR 3.935(D)(1) is present. MCR 3.951(A)(2)(d) and 3.951(B)(2)(d).

## 17.9 Scheduling of Preliminary Examination or Designation Hearing

In a prosecutor-designated case, if the petition is authorized for filing, the court must “schedule a preliminary examination within 14 days before a judge other than a judge who would conduct the trial.” MCR 3.951(A)(2)(c)(ii). If the petition alleges an offense other than a specified juvenile violation and is authorized for filing, the court must schedule a designation hearing within 14 days before a judge other than the judge who would conduct the trial. MCR 3.951(B)(2)(c)(ii).

## 17.10 Required Procedures at Designation Hearings

### A. Referees Who May Preside at Designation Hearings

A referee licensed to practice law in Michigan may preside at a hearing to designate a case and to make recommended findings and conclusions. MCR 3.913(A)(2)(c).\*

\*See Chapter 12 for further discussion of referees’ authority and requirements for review of referees’ recommended findings and conclusions.

### B. Time, Notice, and Service of Process Requirements for Designation Hearings

“The designation hearing shall be commenced within 14 days after the arraignment, unless adjourned for good cause.” MCR 3.952(A).

MCR 3.952(B)(1)–(2) state:

“(1) A copy of the petition or a copy of the petition and separate written request for court designation must be personally served on the juvenile and the juvenile’s parent, guardian, or legal custodian, if the address or whereabouts of the juvenile’s parent, guardian, or custodian is known or can be determined by the exercise of due diligence.

“(2) Notice of the date, time, and place of the designation hearing must be given to the juvenile, the juvenile’s parent, guardian, or legal custodian, and the attorney for the juvenile, if any, and the prosecuting attorney. The notice may be given either orally on the record or in writing, served on each individual by mail, or given in another manner reasonably calculated to provide notice.”

### **C. Rules of Evidence, Standard of Proof, and Burden of Proof at Designation Hearings**

MCR 3.952(C)(1)–(2) state:

“(1) The Michigan Rules of Evidence, other than those with respect to privileges, do not apply.

“(2) The prosecuting attorney has the burden of proving by a preponderance of the evidence that the best interests of the juvenile and the public would be served by designation.”

## **17.11 Criteria to Determine Whether to Designate the Case**

MCL 712A.2d(2)(a)–(f) set forth the criteria to determine whether to designate a case for trial. Those provisions state in relevant part:

(2) . . . The court may designate the case following a hearing if it determines that the best interests of the juvenile and the public would be served by the juvenile being tried in the same manner as an adult. In determining whether the best interests of the juvenile and the public would be served, the court shall consider all of the following factors, giving greater weight to the seriousness of the alleged offense and the juvenile’s prior delinquency record than to the other factors:

(a) The seriousness of the alleged offense in terms of community protection, including, but not limited to, the existence of any aggravating factors recognized by the sentencing guidelines, the use of a firearm or other dangerous weapon, and the impact on any victim.

(b) The juvenile's culpability in committing the alleged offense, including, but not limited to, the level of the juvenile's participation in planning and carrying out the offense and the existence of any aggravating or mitigating factors recognized by the sentencing guidelines.

(c) The juvenile's prior record of delinquency including, but not limited to, any record of detention, any police record, any school record, or any other evidence indicating prior delinquent behavior.

(d) The juvenile's programming history, including, but not limited to, the juvenile's past willingness to participate meaningfully in available programming.

(e) The adequacy of the punishment or programming available in the juvenile justice system.

(f) The dispositional options available for the juvenile."

MCR 3.952(C)(3)(a)–(f) contain substantially similar criteria.

## **17.12 Required Procedures Following Designation Hearings**

MCR 3.952(D)(1)(a)–(b) state as follows:

"(1) If the court determines that it is in the best interests of the juvenile and the public that the juvenile be tried in the same manner as an adult in the family division of the circuit court, the court must:

(a) enter a written order granting the request for court designation and

(i) schedule a preliminary examination within 14 days if the juvenile is charged with a felony or an offense for which an adult could be imprisoned for more than one year, or

(ii) schedule the matter for trial or pretrial hearing if the juvenile is charged with a misdemeanor.

(b) make findings of fact and conclusions of law forming the basis for entry of the order designating the petition. The findings and conclusions may be incorporated in a written opinion or stated on the record.”

If the case is designated, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction unless a probable cause hearing is required under MCL 712A.2d(4). MCL 712A.2d(3).

MCR 3.952(E) states that “[i]f the request for court designation is denied, the court shall make written findings or place them on the record.\* Further proceedings shall be conducted pursuant to MCR 3.941–3.944,” rules governing delinquency proceedings.

\*See Section 21.7 for case law requiring a court to make findings on all of the applicable factors when deciding whether to sentence a juvenile as an adult.

## 17.13 Combined Designation Hearings and Preliminary Examinations

MCR 3.953(C) provides that, in a court-designated case, the preliminary examination and the designation hearing may be combined, “provided that the Michigan Rules of Evidence, except as otherwise provided by law, apply only to the preliminary examination phase of the combined hearing.”

Although a referee may preside at a designation hearing, only a judge may preside at a preliminary examination. Thus, a judge must preside at a combined hearing.\*

\*See Sections 17.14–17.20 for the rules governing preliminary examinations.

## 17.14 Preliminary Examinations in Designated Case Proceedings

MCL 712A.2d(4) sets forth the requirements for preliminary examinations in designated case proceedings:

“(4) If the petition in a case designated under this section alleges an offense that if committed by an adult would be a felony or punishable by imprisonment for more than 1 year, the court shall conduct a probable cause hearing not later than 14 days after the case is designated to determine whether there is probable cause to believe the offense was committed and whether there is probable cause to believe the juvenile committed the offense. This hearing may be combined with the designation hearing under subsection (2) for an offense other than a specified juvenile offense.\* A probable cause hearing under this

\*See Section 17.13, above.

section is the equivalent of the preliminary examination in a court of general criminal jurisdiction and satisfies the requirement for that hearing. A probable cause hearing shall be conducted by a judge other than the judge who will try the case if the juvenile is tried in the same manner as an adult.”

See also MCR 3.953(A). This probable cause hearing is defined in MCR 3.903(D)(5) as a preliminary examination and is referenced as such in MCR 3.953. The preliminary examination should be distinguished from the probable cause hearing required to support detention at the arraignment.

## 17.15 Judges Who May Preside at Preliminary Examinations

A judge must preside at a preliminary examination in a designated case. MCR 3.912(A)(3). The judge who presides at the preliminary examination may not preside at the trial of the same designated case unless a determination of probable cause is waived. MCL 712A.2d(4) and MCR 3.912(C)(1).\*

However, the judge who presides at a preliminary examination may accept a plea in the designated case. MCR 3.912(C)(1).\*

In adult criminal cases, the preliminary examination takes place in the district court, and the defendant may challenge that court’s bindover decision by moving to quash the information in circuit court, a “higher” court. In designated case proceedings, however, the preliminary examination occurs within the Family Division of the Circuit Court. Thus, in order for a judge of a “higher” court to review the probable cause determination, the juvenile would have to appeal to the Court of Appeals. In addition, if another judge of the Family Division were required to review the probable cause determination, a problem would arise in circuits with only one judge sitting in the Family Division.

In *People v Cason*, 387 Mich 586 (1972), the Michigan Supreme Court approved the practice of one Recorder’s Court judge reviewing the bindover decision of another Recorder’s Court judge. See also *People v Doss*, 78 Mich App 541, 545 (1977) (the practice in Recorder’s Court “does not come under the usual rule which precludes a judge of one jurisdiction from hearing an appeal from a decision of another judge enjoying coordinate jurisdiction . . . . The judges are occupying different roles; in one instance, acting as magistrates, and in the other, as felony trial judges”).

These cases suggest that judges of the Family Division may review one another’s probable cause determinations in designated cases. In addition,

\*See Section 17.17, below, for requirements to waive preliminary examination.

\*See Chapter 18 for a discussion of pleas in designated cases.

\*See also Section 17.21, below, for discussion of motions to dismiss or remand following preliminary examinations.

MCR 3.912(A)(3) and 3.912(C) do not seem to require that the judge who conducts a preliminary examination be a Family Division judge. Thus, a district court judge or magistrate may conduct the preliminary examination, and, if a motion to quash is filed, it may be heard by the trial judge in the Family Division.

\*See *Criminal Procedure Monograph 5—Preliminary Examinations (Revised Edition)* (MJL, 2003) for a full discussion of these requirements.

## **17.16 Required Procedures at Preliminary Examinations**

“The preliminary examination must be conducted in accordance with MCR 6.110.” MCR 3.953(E). MCR 6.110 contains the procedural requirements for preliminary examinations in adult criminal cases. MCL 766.1 et seq. contain the statutory requirements for preliminary examinations in adult criminal cases.\*

## **17.17 Requirements to Waive a Preliminary Examination**

Under MCR 3.953(B), “[t]he juvenile may waive the preliminary examination if the juvenile is represented by an attorney and the waiver is made and signed by the juvenile in open court. The judge shall find and place on the record that the waiver was freely, understandingly, and voluntarily given.”

If the court permits the juvenile to waive the preliminary examination, it must schedule the matter for trial or pretrial hearing on the charge set forth in the petition. MCR 3.953(F)(1) and MCR 6.110(A).

The people and an adult criminal defendant are entitled to a prompt preliminary examination. MCR 6.110(A). The people may demand a preliminary examination even though the defendant has waived his or her right to an examination. *People v Wilcox*, 303 Mich 287, 295–96 (1942).

## **17.18 Time Requirements for Preliminary Examinations**

MCR 3.953(D) provides that “[t]he preliminary examination must commence within 14 days of the arraignment in a prosecutor-designated case or within 14 days after court-ordered designation of a petition, unless the preliminary examination was combined with the designation hearing.”

## **17.19 Rules of Evidence at Preliminary Examinations**

Each party may subpoena witnesses, offer proofs, and examine and cross-examine witnesses at the preliminary examination. Except as otherwise provided by law, the court must conduct the examination in accordance with

the rules of evidence. A verbatim record must be made of the preliminary examination. MCR 6.110(C).

The judge may inquire into any matter connected with the charged offense deemed pertinent. *People v Dochstader*, 274 Mich 238, 243 (1936), and *People ex rel Ingham Co Prosecutor v East Lansing District Judge*, 42 Mich App 32, 37–38 (1972) (judge has discretion to order in-court lineup to assure reliability of identification process). However, only legally admissible evidence may be considered in reaching a decision to bind the defendant over for trial. *People v Walker*, 385 Mich 565, 574–76 (1971), and *People v Kubasiak*, 98 Mich App 529, 536 (1980). See also *People v McMahan*, 451 Mich 543, 545–53 (1996) (corpus delicti rule applies to preliminary examinations).

## 17.20 Possible Findings and Conclusions Following Preliminary Examinations

MCL 712A.2d(5)–(6) set forth the possible findings and conclusions following a preliminary examination. Those provisions state as follows:

“(5) If the court determines there is probable cause to believe the offense alleged in the petition was committed and probable cause to believe the juvenile committed the offense, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction.

“(6) If the court determines that an offense did not occur or there is not probable cause to believe the juvenile committed the offense, the court shall dismiss the petition. If the court determines there is probable cause to believe another offense was committed and there is probable cause to believe the juvenile committed that offense, the court may further determine whether the case should be designated as a case in which the juvenile should be tried in the same manner as an adult as provided in subsection (2).<sup>\*</sup> If the court designates the case, the case shall be set for trial in the same manner as the trial of an adult in a court of general criminal jurisdiction.”

<sup>\*</sup>See Sections 17.11 (criteria to determine whether to designate case) and 17.13 (combined designation hearing and preliminary examination), above.

Note that subsection (6) states that the court must conduct a designation hearing if it finds that there is probable cause to believe that the juvenile has committed “another offense.” Similarly, MCR 3.953(F)(3) provides that the court must conduct a designation hearing if the court finds there is probable cause to believe that the juvenile committed a lesser-included offense. MCR 3.953(F)(1)–(3) state:

“(1) If the court finds there is probable cause to believe that the alleged offense was committed and probable cause to believe the juvenile committed the offense, the court may schedule the matter for trial or a pretrial hearing.

“(2) If the court does not find there is probable cause to believe that the alleged offense was committed or does not find there is probable cause to believe the juvenile committed the offense, the court shall dismiss the petition, unless the court finds that probable cause exists to believe that a lesser-included offense was committed and probable cause to believe the juvenile committed it.

“(3) If the court finds there is probable cause to believe that a lesser-included offense was committed and probable cause to believe the juvenile committed that offense, the court may, as provided in MCR 3.952, further determine whether the case should be designated as a case in which the juvenile should be tried in the same manner as an adult. If the court designates the case following the determination of probable cause under this subrule, the court may schedule the matter for trial or a pretrial hearing.”

A criminal defendant may be bound over for trial for a different or greater offense than that charged if the prosecutor at the preliminary examination moves to amend the complaint and warrant, and if the amendment does not prejudice the defendant because of unfair surprise, inadequate notice, or insufficient opportunity to defend. *People v Mathis (On Remand)*, 75 Mich App 320, 327–30 (1977), and *People v Hunt*, 442 Mich 359, 362–65 (1993). MCL 712A.11(6) provides that a petition may be amended at any stage of the proceedings, as the ends of justice require.

## **17.21 Motions to Dismiss or Remand Following Preliminary Examinations**

MCR 3.953(E) provides that the preliminary examination in a designated case must be conducted in accordance with MCR 6.110, which deals with preliminary examinations in criminal cases. Once an examining magistrate has bound over an adult defendant for trial in a court of general criminal jurisdiction, the defense may challenge the bindover and move to quash the information or remand the case to the district court for further proceedings. MCR 6.110(H) provides that if, on proper motion, the trial court finds a violation of the following rules, it must either dismiss the information or remand the case to district court for further proceedings:



- MCR 6.110(C), which deals with the conduct of the examination;
- MCR 6.110(D), which deals with the exclusion or admission of evidence at the examination;
- MCR 6.110(E), which deals with the probable cause finding of the magistrate; and
- MCR 6.110(F), which deals with discharge of the defendant upon a finding of no probable cause.

In the context of designated case proceedings, where the authorized petition serves as the criminal information, and where a judge other than the trial judge must serve as the examining magistrate, MCR 6.110(H) must be construed to afford the juvenile the procedural protections and guarantees that would be available to an adult criminal defendant. See MCL 712A.2d(7). These protections and guarantees include:

- The right to a preliminary examination. If the accused waived the statutory right to a preliminary examination without having the benefit of counsel at the time of waiver, upon timely motion before trial or plea, the trial judge may remand the case to a magistrate for a preliminary examination. MCL 767.42(1).\*
- A prompt examination. MCL 766.4 requires that the examination be held within 14 days of arraignment. MCR 3.953(D) mirrors this requirement. The examination may be adjourned, continued, or delayed for good cause shown. See MCR 6.110(B) and *People v Crawford*, 429 Mich 151, 156–57 (1987).\*
- Questioning of the complainant and prosecution witnesses in the presence of the accused with regard to the offense charged and any other matters connected to the charged offense that the magistrate deems pertinent. MCL 766.4.\*
- A showing that a crime has been committed and that the accused committed the alleged crime. *People v Greenberg*, 176 Mich App 296, 305–07 (1989), and *People v Makela*, 147 Mich App 674, 679–82 (1985). The prosecuting attorney must make a prima facie case for each element of the crime charged before the accused can be ordered to stand trial. *People v Uhl*, 169 Mich App 217, 220–21 (1988).\*
- The calling and examination of defense witnesses, with the assistance of counsel. MCL 766.12.\*
- “Good reason” for the magistrate to believe that the defendant is guilty of the crime charged. *People v King*, 412 Mich 145, 153 (1981).

\*See Section 17.17 (requirements to waive preliminary examination).

\*See Section 17.18 (time requirements for preliminary examinations).

\*See Section 17.19 (rules of evidence at preliminary examinations).

\*See Section 17.20 (possible findings and conclusions following preliminary examinations).

\*See Section 17.19 (rules of evidence at preliminary examinations).

\*See Section 17.15 for a discussion of which judges may review probable-cause findings in designated cases.

- Trial court review of the magistrate’s finding of probable cause. *People v Stewart*, 52 Mich App 477 (1974). When a magistrate has ordered an accused bound over for trial, a review of that order is limited to the contents of the preliminary examination transcript. *People v Waters*, 118 Mich App 176, 183 (1982).\*
- Upon a motion to quash, reversal of the magistrate’s decision where there is an abuse of discretion. *People v Whittaker*, 187 Mich App 122, 126–28 (1991).
- Trial court determination of the admissibility of evidence allowed or excluded during the preliminary examination. MCR 6.110(D) provides that this may be based on any prior evidentiary record, a prior record supplemented with a hearing before the trial court, or a new evidentiary hearing if there was no prior evidentiary hearing.

The remedies that MCR 6.110(H) provides upon a violation of MCR 6.110(C)–(F) include quashing the information (which dismisses the prosecution) or, in the alternative, remanding the case for further proceedings before the magistrate. In the context of designated proceedings, this would mean either that the petition would be dismissed without prejudice, or that the matter would be remanded to the judge who conducted the preliminary examination for further proceedings.

In *In re Abraham*, 234 Mich App 640 (1999), the trial court denied defendant’s motion to quash the petition. Defendant, who was 11 years old at the time, allegedly fatally shot one person and attempted to shoot another person. The prosecuting attorney designated defendant’s case for criminal trial in the Family Division. At the “probable cause hearing,” friends of defendant testified that defendant broke into a house, stole a rifle, practiced shooting balloons and streetlights, threatened to shoot gang members, and then boasted about having shot someone. The Family Division bound defendant over for trial on one count of first-degree murder, one count of assault with intent to commit murder, and two counts of felony firearm.

The Court of Appeals affirmed the magistrate’s decision to bind over defendant on all charges. Although testimony showed that defendant shot at inanimate objects prior to his alleged shooting of the dead victim, other evidence sufficiently established his intent to kill to allow defendant to be bound over for trial on the first-degree murder charge. As to the charge of assault with intent to commit murder, the victim testified that he heard a bullet go past his head, and that he then saw defendant fleeing with what appeared to be a rifle in his hand. This testimony, coupled with defendant’s alleged statement that he planned on killing someone, were sufficient to establish defendant’s intent for purposes of bindover.

## 17.22 Table Summarizing Requirements to Initiate Designated Case Proceedings

The following table summarizes the different requirements for initiating the two types of designated case proceedings.

|  | Prosecutor-Designated Cases   | Court-Designated Cases   |
|--|---|--|
| <b>What Types of Offenses May Be Alleged?</b>                        | A specified juvenile violation must be alleged. MCR 3.903(D)(6).  | Any offense, felony or misdemeanor, other than a specified juvenile violation may be alleged. MCR 3.903(D)(2).   |
| <b>What Must Be Stated on the Petition?</b>                          | Prosecutor must endorse petition with designation of case for criminal trial in Family Division. MCR 3.903(D)(6) and 3.914(D)(1).   | Prosecutor must submit petition requesting the court to designate case for criminal trial in Family Division. MCR 3.903(D)(2) and 3.914(D)(2).   |
| <b>How and When May a Petition Without a Designation Be Amended?</b> | <p>Prosecutor may amend petition to designate the case by right during a preliminary hearing, or prosecutor may request leave of court to designate the case no later than a pretrial hearing or, if no pretrial hearing is held, no later than 21 days before trial, absent good cause for further delay. MCR 3.951(A)(3).</p> <p>Court may also permit prosecutor to amend the petition to designate the case as the interests of justice require. MCR 3.951(A)(3).</p> | <p>Prosecutor may amend petition to request the court to designate the case by right during a preliminary hearing, or prosecutor may request leave of court to amend the petition to request the court to designate the case no later than a pretrial hearing or, if no pretrial hearing is held, no later than 21 days before trial, absent good cause for further delay. MCR 3.951(B)(3).</p> <p>Court may also permit prosecutor to amend the petition to request the court to designate the case as the interests of justice require. MCR 3.951(B)(3).</p> |

|   | <b>Prosecutor-Designated Cases</b>   | <b>Court-Designated Cases</b>  |
|---|--|--|
| <b>What Are the Time Requirements for Arraignments in Family Division?</b>  | <p>If juvenile is in custody or custody is requested, arraignment must commence within 24 hours after taking custody of juvenile, excluding Sundays and holidays, or juvenile must be released. MCR 3.951(A)(1)(a).</p> <p>Arraignment may be adjourned up to 7 days to secure attendance of juvenile's parent, guardian, or legal custodian, or for other good cause shown. MCR 3.951(A)(1)(a).</p> <p>If juvenile is not in custody and custody is not requested, arraignment must commence as soon as juvenile's attendance can be secured. MCR 3.951(A)(1)(b).</p> | <p>If juvenile is in custody or custody is requested, arraignment must commence within 24 hours after taking custody of juvenile, excluding Sundays and holidays, or juvenile must be released. MCR 3.951(B)(1)(a).</p> <p>Arraignment may be adjourned up to 7 days to secure attendance of juvenile's parent, guardian, or legal custodian, or for other good cause shown. MCR 3.951(B)(1)(a).</p> <p>If juvenile is not in custody and custody is not requested, arraignment must commence as soon as juvenile's attendance can be secured. MCR 3.951(B)(1)(b).</p> |
| <b>What Are the Requirements for Determining Whether Case Will Be Designated for Criminal Trial in Family Division?</b> | <p>Prosecutorial discretion.</p> <p>If the court authorizes the petition, the court schedules a preliminary examination within 14 days following arraignment. MCR 3.951(A)(2)(c)(ii).</p>  | <p>Prosecutor requests that the court designate the case. If the court authorizes the petition, a designation hearing must commence within 14 days of arraignment unless adjourned for good cause. MCR 3.951(B)(2)(c)(ii) and 3.952(A).</p> <p>At hearing, court decides whether to designate the case by using the factors in MCR 3.952(C)(3)(a)–(f).</p> <p>The designation hearing may be combined with the preliminary examination. MCR 3.953(C).</p>  |

|   | Prosecutor-Designated Cases  | Court-Designated Cases  |
|---|--|---|
| <b>What are the Requirements for the Preliminary Examination?</b> | <p>Exam is required unless waived by juvenile in a writing made and signed in open court, and juvenile is represented by an attorney; the judge must find and place on the record that the waiver was freely, understandingly, voluntarily given. MCR 3.953(B).</p> <p>Exam must commence within 14 days of arraignment unless adjourned for good cause shown, and must be conducted in accordance with MCR 6.110. MCR 3.953(D)–(E).</p> | <p>Exam is required for felonies and offenses punishable by imprisonment for more than 1 year unless waived by juvenile in a writing made and signed in open court, and juvenile is represented by an attorney; the judge must find and place on the record that the waiver was freely, understandingly, and voluntarily given. MCR 3.953(A)–(B).</p> <p>Exam must commence within 14 days of court-ordered designation, unless the exam was combined with the designation hearing; exam may be adjourned for good cause shown, and must be conducted in accordance with MCR 6.110. MCR 3.953(D)–(E).</p> |

## 17.23 Table of Time and Notice Requirements in Designated Case Proceedings

The following table contains time and notice requirements only; for contents of notices, see the appropriate sections. To compute time periods, see MCR 1.108. For court holidays, see MCR 8.110(D).

| Type of Proceeding | Time and Notice Requirements   | Authorities and Cross-References                                  |
|--------------------|--|---|
| <b>Arraignment</b> | If juvenile is in custody or custody is requested, arraignment must be held within 24 hours after juvenile has been taken into court custody, excluding Sundays and holidays. As soon as hearing is scheduled, notice must be given in person, on record, or by phone to juvenile and his or her parent. | MCR 3.951(A)(1)(a) and 3.951(B)(1)(a).<br><b>See Section 17.6</b> |
|                    | If juvenile is not in custody, arraignment must be held as soon as juvenile's attendance can be secured.   | MCR 3.951(A)(1)(b) and 3.951(B)(1)(b).<br><b>See Section 17.6</b> |
|                    | Court may adjourn arraignment for up to 7 days to secure attendance of juvenile's parent, guardian, or legal custodian, or for other good cause shown.   | MCR 3.951(A)(1)(a), 3.951(B)(1)(a).<br><b>See Section 17.6</b>    |

| Type of Proceeding  | Time and Notice Requirements   | Authorities and Cross-References  |
|---|--|---|
| <b>Motion to Amend Petition to Designate Case for Criminal Trial in Family Division</b> | <p>If a specified juvenile violation is alleged but prosecutor did not initially designate the case, prosecutor may amend the petition by right during the preliminary hearing, or by leave of court no later than a pretrial hearing. If no pretrial hearing is held, prosecutor may request leave to amend no later than 21 days before trial, absent good cause for further delay. Court may allow amendment in interest of justice.</p>          | <p>MCR 3.951(A)(3).<br/><b>See Section 5.5</b></p>                          |
|   | <p>If an offense other than a specified juvenile violation is alleged, prosecutor may amend the petition by right to request the court to designate case during the preliminary hearing, or by leave of court no later than a pretrial hearing. If no pretrial hearing is held, prosecutor may request leave to amend no later than 21 days before trial, absent good cause for further delay. Court may allow amendment in interest of justice.</p> | <p>MCR 3.951(B)(3).<br/><b>See Section 5.5</b></p>                          |
|   | <p>If a hearing is required, seven days' notice in writing or on record must be given to juvenile, custodial parent or guardian, or legal custodian, noncustodial parent who has requested notice at a hearing or in writing, guardian ad litem, attorney for juvenile, prosecuting attorney, and petitioner.</p>  | <p>MCR 3.920(C)(1) and 3.921(A)(1).<br/><b>See Sections 6.3 and 6.7</b></p> |

| Type of Proceeding                | Time and Notice Requirements  | Authorities and Cross-References   |
|-----------------------------------|---|--|
| <b>Designation Hearings</b>       | <p>Hearing must be commenced within 14 days after arraignment, unless adjourned for good cause.</p> <p>Notice in writing, on the record, or in another manner reasonably calculated to provide notice must be given to juvenile, parent, guardian, or legal custodian, attorney for juvenile, and prosecuting attorney.</p> <p>The petition, or a copy of the petition, and a separate request for court designation must be personally served on juvenile, and if address or whereabouts known or discoverable by due diligence, parent, guardian, or custodian.</p> | <p>MCR 3.952(A).<br/><b>See Section 17.10(B)</b></p> <p>3.952(B)(2).<br/><b>See Section 17.10(B)</b></p> <p>MCR 3.952(B)(1).<br/><b>See Section 17.10(B)</b></p> |
| <b>Preliminary Examinations</b>   | <p>Examination must commence within 14 days of arraignment in a prosecutor-designated case, or within 14 days of court designation in a court-designated case unless the preliminary examination was combined with designation hearing.</p> <p>Examination may be adjourned for good cause. Finding must be made on the record.</p>   | <p>MCR 3.953(D).<br/><b>See Section 17.18</b></p> <p>MCR 6.110(B)(1).<br/><b>See Section 17.18</b></p>   |
| <b>Trials in Designated Cases</b> | In all cases, prejudice to the defendant is presumed where delay between arrest and trial exceeds 18 months.  | <p>MCL 768.1 and <i>People v Grimmett</i>, 388 Mich 590, 606 (1972).<br/><b>See Chapter 18</b></p>   |
| <b>Adult Sentencing Hearings</b>  | <p>Court must sentence defendant within a reasonably prompt time, unless court delays sentencing as provided by law.</p> <p>Presentence report must be disclosed to prosecutor, defendant, and defense counsel at a reasonable time before the day of sentencing.</p>   | <p>MCR 3.955(C) and 6.425(D)(2).<br/><b>See Section 19.3</b></p> <p>MCR 6.425(B).<br/><b>See Section 19.3</b></p>  |



| Type of Proceeding  | Time and Notice Requirements  | Authorities and Cross-References   |
|---|---|--|
| <b>Annual Review of Delayed Imposition of Adult Sentence</b>            | Court must conduct review annually. No notice or hearing is required.   | MCR 3.956(A)(1)(a)(i).<br><b>See Section 22.2</b>  |
| <b>Periodic Review Hearing of Delayed Imposition of Adult Sentence</b>  | <p>Court may conduct a hearing at any time upon petition of institution or agency to which juvenile has been committed.</p> <p>Not less than 14 days before hearing is to be conducted, court must notify the prosecutor, the agency or superintendent of the institution or facility to which the juvenile has been committed, the juvenile, and, if addresses are known, the juvenile's parent, guardian, or legal custodian.</p> | <p>MCR 3.956(A)(1)(a)(ii).<br/><b>See Section 22.2</b></p> <p>MCR 3.956(A)(1)(b).<br/><b>See Section 22.2</b></p>        |
| <b>Mandatory Hearing to Review Delayed Imposition of Adult Sentence</b> | <p>Court must conduct hearing within 42 days of juvenile's 19th birthday, unless adjourned for good cause.</p> <p>Not less than 14 days before hearing is to be conducted, court must notify the prosecutor, the agency or superintendent of the institution or facility to which the juvenile has been committed, the juvenile, and, if addresses are known, the juvenile's parent, guardian, or legal custodian.</p>              | <p>MCR 3.956(A)(1)(a)(iii).<br/><b>See Section 22.3(A)</b></p> <p>MCR 3.956(A)(1)(b).<br/><b>See Section 22.3(B)</b></p> |
| <b>Final Review Hearing of Delayed Imposition of Adult Sentence</b>     | <p>Court must conduct hearing not less than 91 days before the end of probation period.</p> <p>Not less than 14 days before hearing is to be conducted, court must notify the prosecutor, the agency or superintendent of the institution or facility to which the juvenile has been committed, the juvenile, and, if addresses are known, the juvenile's parent, guardian, or legal custodian.</p>                                 | <p>MCR 3.956(A)(1)(a)(iv).<br/><b>See Section 22.8</b></p> <p>MCR 3.956(A)(1)(b).<br/><b>See Section 22.8(A)</b></p>     |

| Type of Proceeding   | Time and Notice Requirements   | Authorities and Cross-References                  |
|--|--|---|
| <b>Probation Violation Hearing in Designated Case Involving Delayed Imposition of Adult Sentence</b> | If a hearing is required, it must be conducted pursuant to MCR 3.944(C). | MCR 3.956(B)(3).<br><b>See Sections 22.5–22.7</b> |